

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ICICI BANK UK PLC,

Plaintiff,

- against -

CARGILL, INCORPORATED AND CARGILL
FINANCIAL SERVICES INTERNATIONAL,
INC.,

Defendants.
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Case No. 15-5379 (VEC)

**PLAINTIFF’S MEMORANDUM
OF LAW IN SUPPORT OF
MOTION FOR LEAVE
TO AMEND COMPLAINT**

CARGILL, INCORPORATED AND CARGILL
FINANCIAL SERVICES INTERNATIONAL,
INC.,

Third-Party Plaintiffs,

- against -

THE RECEIVABLES EXCHANGE, LLC,

Third-Party Defendant.
-----X

ICICI BANK UK PLC,

Plaintiff on the
Additional Claim,

- against -

THE RECEIVABLES EXCHANGE, LLC,

Defendant on the
Additional Claim
-----X

Plaintiff ICICI Bank UK plc (the “Bank”), by and through its attorneys, Sullivan & Worcester LLP, respectfully submits this Memorandum of Law in Support of its Motion for Leave to Amend its Complaint (the “Motion”), pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. The Bank’s proposed Amended Complaint is attached as Exhibit 1 to the Declaration of Michael T. Sullivan, dated October 5, 2015 (the “Sullivan Declaration”).¹ The proposed amendments include a claim for fraud and a claim for negligent misrepresentation against Cargill, Incorporated and Cargill Financial Services International, Inc. (together, “Cargill”)

Argument

It is well-settled that leave to amend a pleading should be “freely granted when justice so requires.” Fed. R. Civ. P. 15(a); *Freidus v. Barclays Bank PLC*, 734 F.3d 132, 140 (2d Cir. 2013). Leave to amend a pleading may be denied “only for such reasons as [1] undue delay, [2] bad faith, [3] futility of the amendment, and . . . [4] the resulting prejudice to the opposing party.” *Agropong v. Memon*, No. 14-CV-7990 RWS, 2015 WL 5610879, at *3 (S.D.N.Y. Sept. 23, 2015). None of those reasons is present here.

First, there has been no undue delay. The Bank filed its Complaint less than three months ago. It makes this Motion based in part on information that Cargill revealed in its Third-Party Complaint against The Receivables Exchange, LLC after the Bank filed its original Complaint. Furthermore, the Motion is timely under the Civil Case Management Plan and Scheduling Order [DI 20].

Second, the Motion is not sought in bad faith. The Bank seeks to add well-pled and factually supported claims for fraud and negligent misrepresentation.

¹ The Bank’s previously filed Complaint is attached as Exhibit 2 to the Sullivan Declaration, and a comparison of the two pleadings is attached thereto as Exhibit 3.

Third, and relatedly, because the proposed claims are supported by particularized factual allegations, amendment will not be futile.

Finally, and most importantly, there will be no prejudice to Cargill. The proposed amendments relate closely to the Bank's original claims and discovery is in its early stages. *See Agropong*, No. 2015 WL 5610879 at *4 ("At this early stage, with discovery only just underway and no dispositive motion having been filed, the addition of new claims will result in little prejudice to the Defendants.").

Conclusion

For the reasons set forth above, the Bank respectfully requests that its Motion for Leave to Amend its Complaint be granted.

Dated: New York, New York
October 5, 2015

SULLIVAN & WORCESTER LLP

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